

December 19, 2008

TO: Larry LeClair

FROM: Teresa Parsons
Director's Review Program Supervisor

SUBJECT: Larry LeClair v. Department of Fish & Wildlife (DFW)
Allocation Review Request ALLO-07-087

On October 14, 2008, I conducted a Director's review conference at the Department of Personnel, 2828 Capitol Boulevard, Olympia, Washington, concerning the allocation of your position. In addition to you, Art Irving, Recruitment and Classification Manager, and Cheryl Gardner, Human Resources Consultant, participated in the conference on behalf of DFW.

Director's Determination

This position review was based on the work performed for the six-month period prior to June 22, 2007, the date DFW's Human Resources Office received your reallocation request. As the Director's designee, I carefully considered all of the documentation in the file, the exhibits presented during the Director's review conference, and the verbal comments provided by both parties. Based on my review and analysis of your assigned duties and responsibilities, I conclude your position should be reallocated to the Fish & Wildlife Biologist 4 classification.

Background

Originally, your supervisor, Ray Buckley, submitted a request for reallocation of your position from a Fish & Wildlife Biologist 3 to Research Scientist 1. This included a cover memo to Fish Program Management, an HR action form, a Job Analysis Report, and Position Description Form, dated January 4, 2007 (Exhibits B 1-5). During the Director's review conference, you and Mr. Irving clarified that Mr. Buckley submitted a subsequent reallocation packet, dated June 21, 2007, requesting your position be reallocated to the Fish & Wildlife Biologist 4 classification (Exhibits D 1-4). The second reallocation request, received by DFW's Human Resources Department on June 22, 2007, is the subject of this review.

On August 31, 2007, Mr. Irving issued an allocation determination, concluding your position was properly allocated to the Fish & Wildlife Biologist 3 classification. On September 26, 2007, the Department of Personnel received your request for a Director's review of DFW's allocation decision.

Summary of Mr. LeClair's Perspective

You assert you perform senior-level biologist duties and have responsibility for directing, developing, evaluating, and managing statewide biological studies, research, resource assessments, and policies. Specifically, you contend your responsibility for scientific studies related to the biology and ecology of marine fish in Puget Sound equates to statewide responsibility because all marine life resides in the Puget Sound area. In that capacity, you contend you have sole responsibility for designing and conducting sophisticated research concerning marine animals. You also state that your position has served as principle investigator for scientific studies incorporating advanced statistical methods and theories in experimental design and data analysis. These studies resulted in peer-reviewed articles authored or co-authored by you. Additionally, you state DFW has asked you to provide expert scientific guidance on several marine resource management issues and to develop scientific studies to address management information needs and you co-authored a grant proposal resulting in funds for continued scientific research (Exhibit E). You believe the level of responsibility assigned to your position exceeds the Fish & Wildlife Biologist 3 classification.

Summary of DFW's Reasoning

DFW asserts that allocation to the Fish & Wildlife Biologist 4 classification requires supervisory duties, negotiation duties as an agency lead, or statewide scope of responsibility. Because your position does not supervise or negotiate as an agency lead, DFW contends your position must be assigned statewide responsibility to be allocated as a Fish & Wildlife Biologist 4. While DFW acknowledges, the Marine Fish Science Program is geographically located in the Puget Sound area, DFW maintains your position has not been assigned statewide responsibility. In particular, DFW contends the scope and breadth of responsibility encompassing all regions across the state, not geographical area, determine statewide responsibility. Because your work does not affect species located statewide or impact resources on a statewide basis, DFW contends your duties and responsibilities do not reach the level of a Fish & Wildlife Biologist 4. DFW contends the Fish & Wildlife Biologist 3 is the appropriate classification for your position.

Rationale for Director's Determination

The purpose of a position review is to determine which classification best describes the overall duties and responsibilities of a position. A position review is neither a measurement of the volume of work performed, nor an evaluation of the expertise with which that work is performed. A position review is a comparison of the duties and responsibilities of a particular position to the available classification specifications. This review results in a determination of the class that best describes the overall duties and responsibilities of the position. Liddle-Stamper v. Washington State University, PAB Case No. 3722-A2 (1994).

The Position Description Form (PDF) submitted as part of the reallocation packet in June 2007 and signed by you and your supervisor, Mr. Buckley, in April 2007 describes your position's objective as follows (Exhibit D-3):

This position has state wide responsibility for designing and implementing all aspects of scientific studies aimed at understanding the biology and ecology of marine fish, and for reporting findings and making recommendations to policy makers, resource managers, and stakeholders. It offers specialized expertise in one or more scientific disciplines (e.g. genetics, recruitment ecology, habitat characterization, life history, etc.).

The essential functions listed on the PDF, which are also identified as key job responsibilities in the Job Analysis Report (Exhibit B-5), include the following:

- Designs, plans, and conducts scientific investigations of marine fish and habitat resources;
- Identifies and prioritizes research needs based on management objectives;
- Publishes research findings in peer reviewed literature;
- Makes policy recommendations based on research findings;
- Develops and manages project budgets;
- Seeks, and applies for, funding from outside sources;
- Remains current with relevant research developments.

In the June 21, 2007 memo to Fish Program Management, Mr. Buckley wrote, in part, the following:

. . . Larry assumed . . . responsibilities that involved directing, developing, evaluating and managing resource assessments, research projects and biological studies that had statewide responsibilities within the geographical limits of the resources involved.

In the same memo, Mr. Buckley specified that you have responsibility as lead agency biologist in Marine Fish Science on the project developing the first method for trans-generational marking of marine fish larvae. As indicated above, your lead responsibilities include directing, developing, and evaluating statewide and intrastate research projects to test protocols for trans-generational marking in multiple marine fish species. Mr. Buckley further indicated that you have established a related intra-agency and inter-agency data control, tracking, and retrieval system (Exhibit D-1).

During the Director's review conference, you clarified that some of the lead agency biologist responsibilities Mr. Buckley described, such as mixed stock fishery estimates of co-managed salmon fisheries, referred to an earlier time period. At the time of your position review you stated that about half of your work involved the oversight of the trans-generational marking experiment and that information learned from the study may develop into other satellite research projects that

are connected to the main research project. You agree with the key work activities on the PDF that describe the majority of your work as follows:

- 50% Oversees ongoing statewide scientific investigations of marine resources
- 30% Develops and implements new scientific investigations
- 10% Publishes peer reviewed research findings and orally presents results

During the director's review conference you gave an example of conducting trans- generational studies of rockfish to learn where larvae get released by marking pregnant rockfish. Similar research helps track data about millions of marine animals, including marine fish populations. On the Personnel Action Cover Sheet, Mr. Buckley indicated that the field, lab, analytical, and reporting activities are "crucial. . . for measuring and monitoring the efficacy of Marine Protected Areas in Puget Sound" and "crucial to the successful completion of funded research . . . in marine fish populations" (Exhibit D-2A). You stated that while you work with your supervisor in a team effort, you also have independent responsibility for identifying the need, prioritizing the research, conducting the work, and carrying out the operations of a project, which may be over a two or three year period. You also indicated that you make recommendations and that the results of your research and the reports you develop help drive policy. Your position's PDF indicates you lead and supervise others; however, you clarified that you have supervised up to three temporary employees ranging from Scientific Technicians to a Fish & Wildlife Biologist 2. During the conference, DFW recognized that your work on the trans-generational marking project is crucial and important to the health and survival of marine fishes.

On the HR Action Form, Marine Resources Manager Morris Barker disagreed with Mr. Buckley's rationale for upgrading your position (Exhibit D-2). Mr. Barker did not provide any further explanation. However, in a memo dated July 19, 2007, Division Manager Craig Burley indicated that some of the language on the PDF was too broad in scope. Mr. Burley agreed that your position has responsibility for designing and implementing all aspects of the scientific project he entitled *Creation of Trans-generational Marks in Marine Fish*. However, Mr. Burley disagreed that you have statewide responsibility. Mr. Burley also emphasized the word project and disagreed that you have statewide, ongoing oversight of scientific studies and investigations aimed at understanding the biology and ecology of marine fish and marine resources (Exhibit D-4). DFW provided the agency's definition of statewide responsibility as follows (Exhibit D-5):

Within the structure of the department, the concept of statewide responsibly means: 1) the activities/responsibilities of the biologist encompass all, or most all, of the six administrative regions in the department; OR 2) the activity/responsibilities affect a single species with populations all over the state; OR 3) the activity has a resource impact on the state as a whole.

The same document containing agency definitions includes DFW's definition of Program Specialist, which is described, in part, as a Fish & Wildlife Biologist 3.

The Fish & Wildlife Biologist 3 (class code 93642) definition states, in part:

In the Department of Fish and Wildlife, the Fish and Wildlife Biologist 3 is primarily responsible for planning, developing, and designing professional biological studies, research, or resource assessments, and providing the analysis, assessment, and interpretation of the results and preparation of final written reports, AND . . . is the Program specialist on issues affecting fish . . . in a focused area . . .

The Fish & Wildlife Biologist 4 (class code 93643) definition states, in part:

In the Department of Fish and Wildlife, is a senior biologist responsible for directing, developing, evaluating and managing statewide biological studies, research, resource assessments, policies, legislation or regulation . . .

During the Director's review conference, DFW indicated that the primary distinction between the Fish & Wildlife Biologist 3 and 4 classes with respect to your position is statewide responsibility. When considering "statewide" responsibility, I reviewed a similar decision in which DFW appealed the Director's determination in the matter of Donald D. Simons v. Department of Fish & Wildlife to the former Personnel Appeals Board (PAB). In the Simons determination, the Director's designee concluded Mr. Simons' position should be reallocated to the Fish & Wildlife Biologist 4 classification.

As the Appellant in Dep't of Fish and Wildlife v. Dep't of Personnel, PAB Case No. ALLO-98-0012 (1998), DFW argued that Mr. Simons' position served as a program specialist responsible for the razor clam program but did not function as a program manager and did not have statewide responsibility. DFW argued that razor clams were found "in only two districts along the Pacific coast, not statewide, and that the nature of this program preclude[d] allocation . . . to the 4 level." The Board, however, concluded the following:

. . . the definition and typical work at the 3 level describe positions having primary and principal responsibility for a program limited in scope to . . . a focused area. The razor clam program encompasses all of the razor clams in the state of Washington, therefore, the razor clam program is not limited in scope. Even though it just so happens that the state's population of razor clams is found in Western Washington rather than statewide, Mr. Simons' responsibilities still encompass management of the razor clam program for the entire state of Washington. Because of its statewide responsibility, Mr. Simons' position is properly allocated to the Fish and Wildlife Biologist 4 classification.

Consistent with the prior Board's decision, I conclude your responsibilities involving scientific studies and investigations of marine fish are considered statewide responsibilities. While I understand your upper management does not agree with your supervisor's characterization of your duties and responsibilities, the preponderance of the evidence supports the higher-level duties. It is undisputed your position has responsibility for designing and implementing all aspects of research projects such as the *Creation of Trans-generational Marks in Marine Fish*. You

indicated that projects often take two or three years to complete and often create smaller projects when there are gaps of information. Your supervisor's statements indicate you have had similar responsibilities for other scientific studies as well.

Since your direct supervisor is a Research Scientist 2, it is plausible you would also be assigned duties related to biological studies and research. While you work as a team on some projects, he indicated you had independent responsibility for oversight and direction of others, including trans-generation marking research. The essential functions of your position are supported by the key job responsibilities identified on the job analysis completed by your supervisor. Those duties include designing, planning, and conducting scientific investigations of marine fish and habitat resources, as well as identifying and prioritizing research needs. When considering the scope and level of responsibility assigned to your position, I conclude your position has been assigned statewide, senior biologist responsibilities consistent with the Fish & Wildlife Biologist 4 classification.

Appeal Rights

RCW 41.06.170 governs the right to appeal. RCW 41.06.170(4) provides, in relevant part, the following:

An employee incumbent in a position at the time of its allocation or reallocation, or the agency utilizing the position, may appeal the allocation or reallocation to . . . the Washington personnel resources board Notice of such appeal must be filed in writing within thirty days of the action from which appeal is taken.

The address for the Personnel Resources Board is 2828 Capitol Blvd., P.O. Box 40911, Olympia, Washington, 98504-0911.

If no further action is taken, the Director's determination becomes final.

c: Art Irving, DFW
 Lisa Skriletz, DOP

Enclosure: List of Exhibits